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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/784,918 | 02/16/2001 | William J. Andres | SMS919990003 | 4297 |

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EXAMINER

MCALLISTER, STEVEN B

| ART UNIT | PAPER NUMBER |
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3627

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

XB

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|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 09/784,918 | | ANDRES ET AL. | |
| | Examiner | | Art Unit | |
| | Steven B. McAllister | | 3627 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: claim 1 recites a “user interface for a user to dynamically identify ...”. As understood by the examiner, “dynamically” suggests continual or automatic identification of inventory. As read by the examiner, the specification, while showing that the user can identify inventory for sale, does not show dynamic identification performed by a user (while the automatic identification function in the computer system does provide this dynamic identification). Appropriate correction is required.

Note Regarding Examination

It is noted that as required by MPEP 2144.03(C), the “notoriously old and well known” or “old and well known” statements made regarding certain subject matter in the Office Action of 6/16/2004 are interpreted as admitted prior art since such statements must be traversed in the subsequent response.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-9, 13-21 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al (6,052,667).

'667 shows a user interface (e.g., 20, 12, 14, 16, 404, 408) for a user to dynamically identify time sensitive inventory (e.g., the POS terminals provide a display identifying the time-sensitive inventory item to sell for a reduced price); a sell off processor component comprising an offer generator (e.g., Fig. 4) for generating offers and a communications controller (e.g., Figs. 1, 2); and a back-end integration processor for generating inventory updates for automatically integrating the results of the sale into the management systems at the supplier site (e.g., col. 3, lines 23-26). (It is noted that the system of '667 as a whole resides at the supplier site and that the results are integrated into the management systems at that site).

As to claim 2, it is noted that '667 shows an inventory control component; an offer preparation component; and a sell off management component.

As to claim 4, it is noted that '667 shows an inventory control component having means for updating records of items identified for sell off (e.g., Fig. 6).

As to claim 5, it is noted that '667 inherently shows communication between the inventory control system and the offer preparation component, since the offer preparation component must access inventory information in making the offer.

As to claim 6, '667 shows creating at least one sell file based on item-specific information, such as age.

As to claim 7, '667 shows creating the file based on item-specific information and auction control data, for controlling the dutch auction (as the product gets older it is offered for less as in e.g., Fig. 8).

As to claim 8, '667 shows a tracking component for maintaining historical dutch auction information (e.g., Fig. 18A).

As to claim 9, '667 shows using historical auction data in determining the price (e.g., Figs. 18a-18c).

As to claim 13, it is noted that the apparatus of claim 1 performs all steps of the method including the communications steps which is accomplished by showing the offer to the customer via the display device.

As to claims 14-21, it is noted that apparatus of '667 performs all steps of the method, as discussed above.

As to claim 26, it is noted that the apparatus of '667 comprises software accomplishing all claimed steps.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 13-18, and 26 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over by Walker et al (5,897,620).

'620 shows a front end user interface for a user to dynamically identify time-sensitive inventory since the airline 100 inherently must have a user interface to enter and manipulate data in its system 150,200,160 (also the travel agent 110 and user 105 interfaces provide for the ability to identify time-sensitive inventory to be offered); a sell off processor having an offer generator (e.g., 200) for generating offers for selective sale; and a communication controller for handling communication with prospective buyers along existing supplier communications systems (as required in Fig. 1); and a back end integration processor for generating inventory updates for automatically integrating the results of the sale into the management system at the supplier site (since sales of regular and reduced fare tickets are integrated automatically into the system).

Alternatively, '620 shows all elements except a component which handles communication with the buyers. However, it is notoriously old and well known in the art to provide such an element. For example, it is old and well known to provide the fares directly to the customers via the internet. It would have been obvious to one of ordinary skill in the art to do so in order to avoid travel agent fees.

As to claim 2, it is noted that all elements are shown by '620.

As to claims 3-6, it is noted that all elements are shown.

As to claims 13-18, it is noted that the apparatus of '620 accomplishes all claimed method steps. It is further noted that claim 13 does not required the system itself to communicate the offer, and as such the offering of the tickets to the customer via the travel agent as recited in '620 reads on the recited method step.

As to claim 26, it is noted that the apparatus of '620 comprises software that operates to accomplish all recited steps.

Claims 10-12 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Walker et al (5,897,620).

As to claims 10 and 11, '620 shows all elements except advertising means comprising a web page for posting offers. However, as mentioned above, it is notoriously old and well known in the art to advertise offers directly to a consumer via a web page. It would have been obvious to one of ordinary skill in the art to modify the apparatus of '620 by providing a web page for advertising the offers.

As to claims 10 and 12, '620 shows all elements except an advertising means comprising an email server for distributing offers via email. However, it is notoriously old and well known in the art to do so. For instance, Expedia, Priceline, and Travelocity often send out emails with offers targeted to those who have signed up with the services. It would have been obvious to one of ordinary skill in the art to do so in order to create more business at a relatively low cost.

As to claim 22-25, the apparatus of '620 as modified by the well known prior art accomplishes all steps of the recited method.

Response to Arguments

Applicant's arguments filed 12/1/2004 have been fully considered but they are not persuasive.

Regarding the statement that '667 does not have an element which identifies time sensitive inventory, the examiner upon a re-examination of the reference disagrees. All inventory is tracked in the system, and upon the inventory reaching a certain age, it is automatically and dynamically identified as time-sensitive for entry into the sell-off process. The examiner respectfully disagrees that this is not automatically identifying inventory for sell off.

Regarding "generating offers to *selected buyers*", it is noted that this is not claimed in the claims rejected by '667. It is noted that '667 does teach generating an offer. The system views items ordered to determine if an item ordered is suitable to offer the aging product in lieu of. As the product further ages, it is offered for spare change.

Regarding the argument that '667 do not teach integrating the results into "the yield and revenue management systems" at the supplier's site, the examiner respectfully disagrees. The existing store server 18 is the yield and management system and receives results of all sales, including the selective sales, and integrates that information into its databases. It is noted that the system is at the supplier site.

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As to the argument that the integration component integrates the data into a legacy system, it is noted that the elements are claimed broadly as "existing". As literally claimed, the elements of the system of '667 are existing.

Regarding '620, it is noted that the identifying of items for offering is not claimed at a specific site.

As to selective sale, it is noted that selective sale of unexpected excess time-sensitive inventory at a lower price is shown (e.g., col. 9, lines 15-20). This is recited as being done from the suppliers 100 site 150,160,200. It is in particular noted that communication along existing systems is accomplished with the customer via 150. It is further noted that the claims do not rule out an intermediary, so sales via the travel agent 110 also read on the claim since they use existing supplier communications systems.

With respect to the back end, it is noted that '620 shows automatic integration into the supplier system (e.g., col. 9, lines 1-5).

Regarding Applicant's arguments regarding the "old and well known" statements, attention is drawn to the "Notes on Examination" above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

This is an RCE of applicant's earlier Application No. 09/784,918. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven B. McAllister

STEVE B. MCALLISTER
PRIMARY EXAMINER